IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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Case No. **FAO No. 998 of 1989**

Date of decision : September 13, 2006

Ram Partap ... Appellant

Versus

Radhey Sham and others .. Respondents.

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C O R A M

HON'BLE MR. JUSTICE RANJIT SINGH

Present: Ms.Radhika Suri, Advocate

Mr. S.D.Bansal, Advocate

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RANJIT SINGH, J

Owner of Truck No. HRT 8711, Ram Partap, has filed this appeal impugning the Award of Motor Accidents Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal) awarding compensation of Rs.58,000/- to the respondents herein, who are the unfortunate parents of one Charanjit singh.

On 21.6.1986, said Charanjit Singh, aged little less than 20 years, died in an accident while travelling in the truck referred to above driven by one Raghunandan of District Hissar. Deceased Charanjit Singh was a student of B.Com. at Maharshi Dayanand University, Rohtak. The truck, while proceeding from Rohtak to Delhi, overturned in the vicinity of Village Kherian. As a result of this, deceased Charanjit Singh and other persons travelling in the said truck received injuries. Deceased Charanjit Singh was shifted to Medical College and

Hospital, Rohtak, where he breathed his last on the same night. His body, after post-mortem, was disposed of as unclaimed but later was identified from the photograph by his parents. They, accordingly, filed a petition seeking Rs.2,50,000/- as compensation on account of death of their son.

In written statement filed on behalf of the appellant and the driver of the truck, it was admitted that the accident had taken place and so also death of Charanjit Singh. It was, however, denied if he was travelling in the truck as a passenger. The case set up was that the deceased Charanjit Singh was en employee of the appellant at a fixed salary of Rs.500/- per month and his job was for loading and unloading the goods and other allied duties. The Insurance Company, however, pleaded that the deceased was travelling in the truck as a passenger and, as such, the Insurance Company was not liable to pay the compensation as a passenger was made to travel in a goods vehicle. The Tribunal disbelieved the version given by the driver Raghunandan that the deceased Charanjit Singh was an employee and that he had searched for him after the accident. The Tribunal found that the accident took place due to rash and/or negligent driving of the respondent-driver, Raghunandan.

The Tribunal, thereafter, went ahead to determine if the deceased, Charanjit Singh, was an employee on the truck or was traveling as a passenger. The Tribunal noticed that deceased Charanjit Singh was a student of B.Com. and that his father was running a hotel in Bengal. It also came in the evidence that the deceased had gone to meet his parents in Bengal though he was studying in Maharshi Dayanand University, Rohtak and had commenced return journey from Bengal on 18.6.1986. Noticing this evidence, the Tribunal rightly disbelieved the version given by driver Raghunandan that the deceased Charanjit Singh was found standing on the canal bank at Hissar on 16.6.1986 and that he had approached the driver for employment. The version of the driver that he had then introduced the deceased to the owner Ram Partap (appellant) on 17.6.1986 and that he was

engaged on the said date, on the face of it, is false and advanced only to escape liability that appellant owner was likely to incur on account of making a person to travel as a passenger. The Tribunal had rightly noticed serious chinks in this version besides finding that the appellant and driver of the truck had not challenged the version brought on record by the father of Charanjit Singh that he had commenced return journey from Bengal on 18.6.1986. The Tribunal is perfectly justified in coming to the conclusion that the version given by driver and owner of the truck (appellant) regarding employment of deceased Charanjit Singh is totally false. It has rightly been observed by the Tribunal that a person who was studying in B.Com. at University and whose father was running a hotel in Bengal could not be expected to seek employment as a conductor on a truck. The case, as set up by the appellant owner that deceased Chartanjit Singh had met the driver of the truck at Hissar to seek employment was also totally false as the deceased who was a student at Maharshi Dayanand University, Rohtak could not be expected to travel to Hissar. Finding that the stand of the appellant and the driver of the truck to be false, the Tribunal rightly held deceased was travelling in the truck as a passenger and was not an employee.

Having held so, the Tribunal then made assessment in regard to the earning of the deceased to determine quantum of compensation to which claimants were entitled to. Radhey Sham, the father of the deceased testified before the Tribunal that his son was earning between Rs.700/- to Rs.800/- per month by taking tuitions. This was found to be little exaggerated. Making assessment that even as a labourer, deceased could have earned income of Rs.600/- per month and deducting Rs.200/- from this on account of his own expenses, the dependability of the parents was assessed as Rs.400/- per month. Considering the age of the father and mother of the deceased, which was 50 and 45 years respectively, a multiplier of 12 was applied and thus a compensation payable in this case was assessed as Rs.58,000/- by making it to a round figure. This Award was passed in favour of

the two claimants and against the driver and the owner of the truck to be shared equally. This amount does not appear to be adequate. Unfortunately, the claimants have not preferred any appeal against the quantum of compensation so awarded in this case.

The sole contention raised before me on behalf of the appellants is that the Insurance Company should be held liable to pay this compensation as the deceased was traveling in this vehicle as an employee and not as a passenger. In other words, the finding of the Tribunal in this regard is under challenge.

I have already referred to the evidence that is available on record which clearly shows that deceased Charanjit Singh, by no stretch of imagination, could be considered to be an employee of the truck as has been made out in their version by the appellant and the driver. It is totally unintelligible to say that a student who was studying in B.Com. in a University at Rohtak and whose parents were running a hotel in Bengal, would need to seek employment as a conductor on the truck. The evidence given by the appellant and his driver have been found to be false. It was stated by the claimant father of the deceased that his son had performed return journey from Bengal on 18.6.1986. Under such circumstances, the version given by the appellant and the driver is obviously false and has been found to be so. The reasons for this false version are too obvious. The owner and the driver have given this version only to escape liability and to fasten this liability on to the Insurance Company. Once it is found that the deceased was traveling as a passenger in a truck, which is admittedly a goods vehicle, then the Insurance Company could not be held liable for paying the compensation in this case. In this regard, reference can be made to the cases (i) **National Insurance Company Limited** versus **Bommithi Subbhayamma and others,** 2005 ACJ 721; (ii) **Ramesh Kumar** versus **National Insurance Company Limited and others,** 2001 ACJ 1565; and (iii) **Mallawwa and others** versus **Oriental Insurance Company Limited and others,** 1999 ACJ-1. It has been held by the Hon'ble

Supreme Court in these cases that the Insurance Company cannot be held liable to pay compensation in case of a death or bodily injury to a gratuitous passenger in a goods vehicle and it shall be for the owner/driver of the vehicle to pay such compensation.

There is no merit in this appeal and the same is dismissed. No order as to costs.

(RANJIT SINGH)
JUDGE

September 13, 2006
RS